

TO: Honorable Anthony J. Scirica, Chair  
Standing Committee on Rules of Practice  
and Procedure

FROM: Honorable Adrian G. Duplantier, Chair  
Advisory Committee on Bankruptcy Rules

DATE: May 11, 2000

RE: Report of the Advisory Committee on Bankruptcy Rules

## **I. Introduction**

The Advisory Committee on Bankruptcy Rules met on March 9-10, 2000, in Key Largo, Florida. The Advisory Committee considered public comments regarding proposed amendments to the Bankruptcy Rules that were published in August 1999.

The proposed amendments published in 1999, include revisions to eight Bankruptcy Rules (Rules 1007, 2002, 3016, 3017, 3020, 9006, 9020, and 9022). The Advisory Committee received thirteen written comments on the proposed rules. Several of the comments were offered on behalf of groups, including the Bankruptcy Judges of the Northern District of Illinois, and the Chief Bankruptcy Judges of the Ninth Circuit. One person initially requested an opportunity to appear at a public hearing on the proposed amendments, but he later withdrew that request and rested on his written submission. The Advisory Committee considered the comments at its March 2000 meeting and approved each of the proposed amendments to the Rules, and will present them to the Standing Committee at its June 2000 meeting for final approval and transmission to the Judicial Conference. The Advisory Committee also will present amendments to Official Form 7 (Statement of Financial Affairs) to the Standing Committee for final approval and transmission to the Judicial Conference. The proposed amendments to this Form were published in August 1998 and the Advisory Committee considered the comments at its March 1999 and September 1999 meetings.

## II Action Items

A. Proposed Amendments to Bankruptcy Rules 1007, 2002(c)(3), 2002(g), 3016, 3017, 3020, 9006(f)<sup>1</sup>, 9020, and 9022, and Official Form 7 Submitted for Final Approval by the Standing Committee and Transmittal to the Judicial Conference.

1. *Public Comment.*

The Preliminary Draft of the Proposed Amendments to the Federal Rules of Bankruptcy Procedure and related committee notes were published for comment by the bench and bar in August 1999, and a public hearing on the preliminary draft was scheduled for January 18, 2000. The public hearing was canceled when the only person submitting comments on the proposals who requested to appear at the scheduled hearing withdrew that request.

There were thirteen comments received regarding the proposed amendments to the rules. The comments contained in these submissions are summarized on a rule-by-rule basis following the text of each rule in the GAP Report set out below. The Advisory Committee reviewed these comments, and, as a result, it made several revisions to the published draft. The post-publication revisions are identified in the GAP Report.

The proposed amendments to Official Form 7 were published for comment in August 1998. The Advisory Committee received six comments on the proposed amendments to the form, and those comments are summarized following the text of the form.

2. *Synopsis of Proposed Amendments:*

(a) Rule 1007 is amended so that, if the debtor knows that a creditor is an infant or incompetent person, the debtor will be required to include in the list of creditors and schedules the name, address, and legal relationship of any representative upon whom process would be served in an adversary proceeding against the infant or incompetent person. This information will enable the clerk to mail notices required under Rule 2002 to the appropriate representative.

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<sup>1</sup> Rule 9006(f) extends the three day “mail rule” to electronic service of documents. Proposed amendments to Civil Rule 5(b), on the other hand, do not provide additional time when service is accomplished electronically. The Advisory Committee considered the public comments and concluded that retention of the additional three days is preferable to the provisions in proposed Rule 5(b) F. R. Civ. P. The Advisory Committee, however, also believes strongly that the bankruptcy and civil rules should be consistent. [After reviewing public comments, the Advisory Committee on Civil Rules approved extending the three-day mail rule to service of papers by electronic means in civil cases.]

(b) Rule 2002(c) is amended to assure that parties entitled to notice of a hearing on confirmation of a plan are given adequate notice of any injunction included in the plan that would enjoin conduct not otherwise enjoined by operation of the Bankruptcy Code.

(c) Rule 2002(g) is amended to clarify that where a creditor or indenture trustee files both a proof of claim which includes a mailing address and a separate request designating a different mailing address, the last paper filed determines the proper address, and that a request designating a mailing address is effective only with respect to a particular case. The amendments also clarify that a filed proof of claim is considered a request designating a mailing address if a notice of no dividend has been given under Rule 2002(e), but has been superseded by a subsequent notice of possible dividend under Rule 3002(c)(5). A new paragraph has been added to assure that notices to an infant or incompetent person are mailed to the person's legal representative identified in the debtor's schedules or list of creditors.

(d) Rule 3016 is amended to assure that entities whose conduct would be enjoined under a plan, rather than by operation of the Bankruptcy Code, are given adequate notice of the proposed injunction. The amendment would require that the plan and disclosure statement describe in specific and conspicuous language all acts to be enjoined and to identify the entities that would be subject to the injunction.

(e) Rule 3017 is amended to assure that entities whose conduct would be enjoined under a plan, but who would not ordinarily receive copies of the plan and disclosure statement or information regarding the confirmation hearing because they are neither creditors nor equity security holders, are provided with adequate notice of the proposed injunction, the confirmation hearing, and the deadline for objecting to confirmation of the plan.

(f) Rule 3020 is amended so that, if a plan contains an injunction against conduct not otherwise enjoined under the Code, the order confirming the plan must describe in detail all acts enjoined and identify the entities subject to the injunction. The amendment also requires that notice of entry of the order of confirmation be mailed to all known entities subject to the injunction.

(g) Rule 9006(f) is amended to expand the 3-day rule so that it will apply to any method of service, including service by electronic means, authorized under proposed amendments to Civil Rule 5(b), other than service by personal delivery.

(h) Rule 9020 is amended to delete provisions that delay for 10 days the effectiveness of an order of civil contempt issued by a bankruptcy judge and that render the order subject to *de novo* review by the district court. Other procedural provisions in the rule are replaced with a statement that a motion for an order of contempt made by the United States trustee or a party in interest is governed by Rule 9014 (contested matters).

(i) Rule 9022(a) is amended to authorize the clerk to serve notice of entry of a judgment or order of a bankruptcy judge by any method of service, including service by electronic means, permitted under the proposed amendments to Civil Rule 5(b).

3. *Text of Proposed Amendments to Rules 1007, 2002, 3016, 3017, 3020, 9006, 9020, and 9022.*